

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

TIMOTHY MIKESELL,

Plaintiff,

v.

Civ. No. 15-1026 GJF

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

THIRD ORDER EXTENDING BRIEFING SCHEDULE

THIS MATTER comes before the Court on Defendant's "Motion for Extension of Time" ("Motion") [ECF No. 23]. The Court will **GRANT** the motion but is compelled to make the following observations regarding the motion.

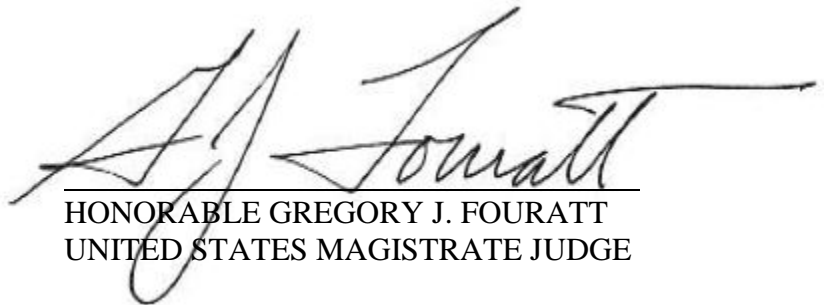
First, in an apparent effort to comply with Local Rule 7.1(a) defense counsel asserts that he "attempted to confer with Plaintiff's counsel but was unable to reach him prior to the filing of the motion. Plaintiff's counsel has always consented to extension requests." Def.'s Mot. 2. This statement strikes the Court in the very least as odd, since the Court was able to determine whether Plaintiff's counsel opposed the Motion by placing a single phone call, which staff from Plaintiff's counsel quickly returned.

In addition, the Court frowns on motions for extension filed on the day the principal document was due to be filed, and particularly so when such motions are filed after the close of business. *See* ECF No. 23 (filed on its due date of September 26, 2016, at 5:36 PM MDT). For a time, the Court considered denying Defendant's Motion and declaring Plaintiff's Motion to Remand [ECF No. 22] to be unopposed under Local Rule of Civil Procedure 7.1(b) for

Defendant's failure to timely respond in opposition. *See* D.N.M.LR-Civ. 7.1(b) ("The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion."). But having determined for itself that Defendant's Motion is unopposed, the Court has instead decided that the interests of justice are best served by permitting Defendant **thirty (30)** additional days in which to respond.

IT IS THEREFORE ORDERED that Defendant is granted through **October 26, 2016**, to file her Response, and Plaintiff through **November 11, 2016**, to file his Reply.

IT IS SO ORDERED.



HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE